

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA

Jeffery Mark Bailey,	)	C/A No. 2:10-3231-TLW -BHH
	)	
Plaintiff,	)	
	)	
vs.	)	Report and Recommendation
	)	
Commissioner of Social Security,	)	
	)	
Defendant.	)	
	)	

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This matter is before the Court because of Plaintiff's failure to comply with the undersigned's Order of December 28, 2010 (ECF No. 10), and because of Plaintiff's failure to prosecute the case in a timely manner. This case was filed by Plaintiff on December 20, 2010. The December 28<sup>th</sup> Order directed Plaintiff to submit certain items: service documents, answers to special interrogatories, and answers to Local Rule 26.1 interrogatories, within twenty-one (21) days in order to bring the case into proper form for consideration of service. Plaintiff was clearly informed that any failure to comply with the directions in the Order would result in a recommendation for dismissal of this case. The mail in which the Order was mailed to Plaintiff was not returned, thus it is presumed that he received the Order, but has decided not to comply or move this case forward. The deadline for Plaintiff's compliance was January 27, 2011, but nothing was received from Plaintiff.

Applying the four-factor test of *Davis v. Williams*, 588 F.2d 69, 70 (4<sup>th</sup> Cir. 1978) to the circumstances of this case, it is clear that the failure of either Plaintiff to take any action

in this case since its filing, coupled with the failure respond to the initial Order in this case, indicates an intent on Plaintiff's part not to prosecute this case.

Accordingly, it is recommended that this case be dismissed *without prejudice* due to Plaintiff's failure to comply with this Court's Order and failure to prosecute the case. See Fed. R. Civ. P. 41(b)(district courts may dismiss an action if a plaintiff fails to comply with "any order of the court"); *see also Ballard v. Carlson*, 882 F.2d 93, 95 (4th Cir. 1989)(dismissal with prejudice appropriate where warning given); *Chandler Leasing Corp. v. Lopez*, 669 F.2d 919, 920 (4<sup>th</sup> Cir. 1982)(court may dismiss *sua sponte*).

Plaintiff's attention is directed to the important notice on the following page.

s/Bruce Howe Hendricks  
United States Magistrate Judge

February 15, 2011  
Charleston, South Carolina

### **Notice of Right to File Objections to Report and Recommendation**

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. “[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4<sup>th</sup> Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); *see* Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Larry W. Propes, Clerk  
United States District Court  
Post Office Box 835  
Charleston, South Carolina 29402

**Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation.** 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).